

ASSEMBLY BILL

No. 949

Introduced by Assembly Member Pavley
(Principal coauthor: Senator Dunn)

February 20, 2003

An act to amend Section 803 of the Penal Code, relating to criminal procedure, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 949, as introduced, Pavley. Criminal procedure: limitations of time.

Under existing law, there are various specified limitations of time after which complaints or indictments may not be filed against defendants. Existing statutes permit those limitations of time to be extended or waived for various specified reasons, sometimes retroactively. In particular, a complaint may be filed within a year of the date a person reports to a California law enforcement agency that he or she was a victim prior to 1994 of specified sexual conduct as a minor, if the otherwise applicable limitation of time has expired, the allegation is corroborated, and other conditions are satisfied.

With regard to these circumstances, this bill would permit a complaint or indictment to be filed within a year of the date a victim reports the conduct to a law enforcement agency, if the victim previously reported the same crime to a law enforcement agency before January 1, 1994, when the limitation of time barred the cause of action. The bill would indicate that this language is intended as a statement of existing law, and is enacted for the purpose of clarification.

A separate provision permits the filing of a criminal complaint within one year of the date of a report to a California law enforcement agency by a person under 21 years of age, alleging that he or she was the victim as a minor of one of a specified set of sex crimes, if the otherwise applicable statute of limitations has expired, and the allegation is corroborated.

With regard to these circumstances, this bill would permit the filing of a complaint or indictment within a year of the date a victim reports the conduct to a law enforcement agency, if the victim previously reported the same crime to a law enforcement agency prior to January 1, 1994, when the limitation of time barred the cause of action. In this regard, this bill would state that this language is intended as a statement of existing law, and is enacted for the purpose of clarification.

This bill would also extend the limitation of time in a child abuse or neglect case by the length of any period of litigation that involves grand jury subpoenas or search warrants issued with respect to the abuse or neglect allegations.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 803 of the Penal Code is amended to
2 read:

3 803. (a) Except as provided in this section, a limitation of
4 time prescribed in this chapter is not tolled or extended for any
5 reason.

6 (b) No time during which prosecution of the same person for
7 the same conduct is pending in a court of this state is a part of a
8 limitation of time prescribed in this chapter.

9 (c) A limitation of time prescribed in this chapter does not
10 commence to run until the discovery of an offense described in this
11 subdivision. This subdivision applies to an offense punishable by
12 imprisonment in the state prison, a material element of which is
13 fraud or breach of a fiduciary obligation, the commission of the
14 crimes of theft or embezzlement upon an elder or dependent adult,
15 or the basis of which is misconduct in office by a public officer,



1 employee, or appointee, including, but not limited to, the
2 following offenses:

3 (1) Grand theft of any type, forgery, falsification of public
4 records, or acceptance of a bribe by a public official or a public
5 employee.

6 (2) A violation of Section 72, 118, 118a, 132, or 134.

7 (3) A violation of Section 25540, of any type, or Section 25541
8 of the Corporations Code.

9 (4) A violation of Section 1090 or 27443 of the Government
10 Code.

11 (5) Felony welfare fraud or Medi-Cal fraud in violation of
12 Section 11483 or 14107 of the Welfare and Institutions Code.

13 (6) Felony insurance fraud in violation of Section 548 or 550
14 of this code or former Section 1871.1, or Section 1871.4, of the
15 Insurance Code.

16 (7) A violation of Section 580, 581, 582, 583, or 584 of the
17 Business and Professions Code.

18 (8) A violation of Section 22430 of the Business and
19 Professions Code.

20 (9) A violation of Section 10690 of the Health and Safety Code.

21 (10) A violation of Section 529a.

22 (11) A violation of subdivision (d) or (e) of Section 368.

23 (d) If the defendant is out of the state when or after the offense
24 is committed, the prosecution may be commenced as provided in
25 Section 804 within the limitations of time prescribed by this
26 chapter, and no time up to a maximum of three years during which
27 the defendant is not within the state shall be a part of those
28 limitations.

29 (e) A limitation of time prescribed in this chapter does not
30 commence to run until the offense has been discovered, or could
31 have reasonably been discovered, with regard to offenses under
32 Division 7 (commencing with Section 13000) of the Water Code,
33 under Chapter 6.5 (commencing with Section 25100) of, Chapter
34 6.7 (commencing with Section 25280) of, or Chapter 6.8
35 (commencing with Section 25300) of, Division 20 of, or Part 4
36 (commencing with Section 41500) of Division 26 of, the Health
37 and Safety Code, or under Section 386, or offenses under Chapter
38 5 (commencing with Section 2000) of Division 2 of, Chapter 9
39 (commencing with Section 4000) of Division 2 of, Chapter 10
40 (commencing with Section 7301) of Division 3 of, or Chapter 19.5

1 (commencing with Section 22440) of Division 8 of, the Business
2 and Professions Code.

3 (f) (1) Notwithstanding any other limitation of time described
4 in this chapter, a criminal complaint may be filed within one year
5 of the date of a report to a responsible adult or agency by a child
6 under 18 years of age that the child is a victim of a crime described
7 in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

8 (2) For purposes of this subdivision, a “responsible adult” or
9 “agency” means a person or agency required to report pursuant to
10 Section 11166. This subdivision applies only if both of the
11 following occur:

12 (A) The limitation period specified in Section 800 or 801 has
13 expired.

14 (B) The defendant has committed at least one violation of
15 Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same
16 victim within the limitation period specified for that crime in either
17 Section 800 or 801.

18 (3) (A) This subdivision applies to a cause of action arising
19 before, on, or after January 1, 1990, the effective date of this
20 subdivision, and it shall revive any cause of action barred by
21 Section 800 or 801 if any of the following occurred or occurs:

22 (i) The complaint or indictment was filed on or before January
23 1, 1997, and it was filed within the time period specified in this
24 subdivision.

25 (ii) The complaint or indictment is or was filed subsequent to
26 January 1, 1997, and it is or was filed within the time period
27 specified within this subdivision.

28 (iii) The victim made the report required by this subdivision to
29 a responsible adult or agency after January 1, 1990, and a
30 complaint or indictment was not filed within the time period
31 specified in this subdivision, but a complaint or indictment is filed
32 no later than 180 days after the date on which either a published
33 opinion of the California Supreme Court, deciding whether
34 retroactive application of this section is constitutional, becomes
35 final or the United States Supreme Court files an opinion deciding
36 the question of whether retroactive application of this subdivision
37 is constitutional, whichever occurs first.

38 (iv) The victim made the report required by this subdivision to
39 a responsible adult or agency after January 1, 1990, and a
40 complaint or indictment was filed within the time period specified

1 in this subdivision, but the indictment, complaint, or subsequently
2 filed information was dismissed, but a new complaint or
3 indictment is or was filed no later than 180 days after the date on
4 which either a published opinion of the California Supreme Court,
5 deciding whether retroactive application of this section is
6 constitutional, becomes final or the United States Supreme Court
7 files an opinion deciding the question of whether retroactive
8 application of this subdivision is constitutional, whichever occurs
9 first.

10 (B) (i) If the victim made the report required by this
11 subdivision to a responsible adult or agency after January 1, 1990,
12 and a complaint or indictment was filed within the time period
13 specified in this subdivision, but the indictment, complaint, or
14 subsequently filed information was dismissed, a new complaint or
15 indictment may be filed notwithstanding any other provision of
16 law, including, but not limited to, subdivision (c) of Section 871.5
17 and subdivision (b) of Section 1238.

18 (ii) An order dismissing an action filed under this subdivision,
19 which is entered or becomes effective at any time prior to 180 days
20 after the date on which either a published opinion of the California
21 Supreme Court, deciding the question of whether retroactive
22 application of this section is constitutional, becomes final or the
23 United States Supreme Court files an opinion deciding the
24 question of whether retroactive application of this subdivision is
25 constitutional, whichever occurs first, shall not be considered an
26 order terminating an action within the meaning of Section 1387.

27 (iii) Any ruling regarding the retroactivity of this subdivision
28 or its constitutionality made in the course of the previous
29 proceeding, including any review proceeding, shall not be binding
30 upon refiling.

31 (g) (1) Notwithstanding any other limitation of time described
32 in this chapter, a criminal complaint may be filed within one year
33 of the date of a report to a California law enforcement agency by
34 a person of any age alleging that he or she, while under the age of
35 18 years, was the victim of a crime described in Section 261, 286,
36 288, 288a, 288.5, 289, or 289.5.

37 (2) This subdivision applies only if both of the following occur:

38 (A) The limitation period specified in Section 800 or 801 has
39 expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and there is independent evidence that clearly and convincingly corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(3) (A) This subdivision applies to a cause of action arising before, on, or after January 1, 1994, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

1 (v) *The complaint or indictment is filed within the time period*
2 *specified in this subdivision, and the victim made the report*
3 *required by this subdivision to a law enforcement agency after*
4 *previously having reported the same crime to a law enforcement*
5 *agency before January 1, 1994, at a time when Section 800 or 801*
6 *barred the cause of action. This clause is intended as a statement*
7 *of existing law, and is enacted for the purpose of clarification.*

8 (B) (i) If the victim made the report required by this
9 subdivision to a law enforcement agency after January 1, 1994,
10 and a complaint or indictment was filed within the time period
11 specified in this subdivision, but the indictment, complaint, or
12 subsequently filed information was dismissed, a new complaint or
13 indictment may be filed notwithstanding any other provision of
14 law, including, but not limited to, subdivision (c) of Section 871.5
15 and subdivision (b) of Section 1238.

16 (ii) An order dismissing an action filed under this subdivision,
17 which is entered or becomes effective at any time prior to 180 days
18 after the date on which either a published opinion of the California
19 Supreme Court, deciding the question of whether retroactive
20 application of this section is constitutional, becomes final or the
21 United States Supreme Court files an opinion deciding the
22 question of whether retroactive application of this subdivision is
23 constitutional, whichever occurs first, shall not be considered an
24 order terminating an action within the meaning of Section 1387.

25 (iii) Any ruling regarding the retroactivity of this subdivision
26 or its constitutionality made in the course of the previous
27 proceeding, by any trial court or any intermediate appellate court,
28 shall not be binding upon refiling.

29 (h) (1) Notwithstanding any other limitation of time described
30 in this chapter, a criminal complaint may be filed within one year
31 of the date of a report to a California law enforcement agency by
32 a person under 21 years of age, alleging that he or she, while under
33 18 years of age, was the victim of a crime described in Section 261,
34 286, 288, 288a, 288.5, 289, or 289.5.

35 (2) This subdivision applies only if both of the following occur:

36 (A) The limitation period specified in Section 800 or 801 has
37 expired.

38 (B) The crime involved substantial sexual conduct, as
39 described in subdivision (b) of Section 1203.066, excluding
40 masturbation that is not mutual, and there is independent evidence

1 that corroborates the victim's allegation. No evidence may be used
2 to corroborate the victim's allegation that otherwise would be
3 inadmissible during trial. Independent evidence does not include
4 the opinions of mental health professionals.

5 (3) This subdivision applies to a cause of action arising before,
6 on, or after January 1, 2002, the effective date of this subdivision,
7 and it shall revive any cause of action barred by Section 800 or 801
8 if the complaint or indictment was filed within the time period
9 specified by this subdivision.

10 (4) *This subdivision applies where the complaint or indictment*
11 *is filed within the time period specified by this subdivision and the*
12 *victim made the report required by this subdivision to a law*
13 *enforcement agency after previously having reported the same*
14 *crime to a law enforcement agency before January 1, 1994, at a*
15 *time when Section 800 or 801 barred the cause of action. This*
16 *paragraph is intended as a statement of existing law and is enacted*
17 *for the purpose of clarification.*

18 (i) (1) Notwithstanding the limitation of time described in
19 Section 800, the limitations period for commencing prosecution
20 for a felony offense described in subparagraph (A) of paragraph
21 (2) of subdivision (a) of Section 290, where the limitations period
22 set forth in Section 800 has not expired as of January 1, 2001, or
23 the offense is committed on or after January 1, 2001, shall be 10
24 years from the commission of the offense, or one year from the
25 date on which the identity of the suspect is conclusively
26 established by DNA testing, whichever is later, provided,
27 however, that the one-year period from the establishment of the
28 identity of the suspect shall only apply when either of the
29 following conditions is met:

30 (A) For an offense committed prior to January 1, 2001,
31 biological evidence collected in connection with the offense is
32 analyzed for DNA type no later than January 1, 2004.

33 (B) For an offense committed on or after January 1, 2001,
34 biological evidence collected in connection with the offense is
35 analyzed for DNA type no later than two years from the date of the
36 offense.

37 (2) In the event the conditions set forth in subparagraph (A) or
38 (B) of paragraph (1) are not met, the limitations period for
39 commencing prosecution for a felony offense described in
40 subparagraph (A) of paragraph (2) of subdivision (a) of Section

290, where the limitations period set forth in Section 800 has not expired as of January 1, 2001, or the offense is committed on or after January 1, 2001, shall be 10 years from the commission of the offense.

(3) For purposes of this section, “DNA” means deoxyribonucleic acid.

(j) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.

(k) *Notwithstanding any other limitation of time prescribed in this chapter, in any investigation involving child abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4, where the limitation period set forth in this chapter has not expired, the limitations of time prescribed in this chapter shall be tolled while litigation involving grand jury subpoenas or search warrants issued with respect to the allegations of child abuse or neglect is pending.*

(l) As used in subdivisions (f), (g), and (h), Section 289.5 refers to the statute enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that prolonged litigation of procedural matters and dilatory tactics during investigation do not interfere with the prosecution of child abuse and neglect cases, it is necessary that this bill take effect immediately.